

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CASE NO. 04-32869 DDO

Marc Harold Ferris
SSN XXX-XX-9797
Tracie Kay Ferris
SSN XXX-XX-3201

CHAPTER 13 CASE

Debtor.

NOTICE OF OBJECTION TO CONFIRMATION OF PLAN

TO: Debtor and other entities specified in Local Rule 3015-3.

1. RBMG, Inc. (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this objection at 10:30 a.m. on August 5, 2004, before the Honorable Dennis D. O'Brien in Courtroom 228A at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on August 4, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than August 2, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed May 12, 2004. The case is now pending before this Court.

5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.
6. Debtor is indebted to Secured Creditor in the principal amount of \$160,637.37, as evidenced by that certain Promissory Note dated February 26, 1999, together with interest thereon.
7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated February 26, 1999, executed by Marc H. Ferris and Tracie K. Ferris, Husband and Wife, recorded April 16, 1999, as Document No. 397171, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A".
8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325(a)(6).
9. Said plan is also objected to on the basis that Debtor is delinquent in their pre-petition monthly mortgage payments to Secured Creditor for the months of November, 2003 through May, 2004, in the total amount of \$12,280.94. The property is also subject to another Secured Creditor's mortgage in favor of Provincial Bank in excess of \$21,735.58, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrtcy.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, would require approximately 66 months to complete based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).
10. The value of the property as scheduled by Debtor is \$235,900.00 subject to Secured Creditor's mortgage in excess of \$170,295.16. The property is also subject to another Secured Creditor's

mortgage in favor of Provincial Bank in excess of \$21,735.58.

11. The plan, as proposed, is not made in good faith by Debtor.
12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 26th day of July, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, Minnesota 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

397171

COPY DEL'D

DO NOT REMOVE 397171

CHARGE TO: _____

Q/R _____

WELL | CHARGE |

NON-ASSUR _____

CASH | CHECK ☒ ESCROW |

ASSURANCE FUND _____

FEE 15.00 _____

BRANCH _____

JOEL T. BECKMAN, REGISTRAR OF TITLES

CERTIFICATE NO. 115114

VOLUME 288 PAGE 34

DOC. NO. 397171

OFFICE OF THE REGISTRAR OF TITLES
DAKOTA COUNTY, MINNESOTA
CERTIFIED THAT THE WRITING INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT
11:41 AM APR 16 P 12

AP# 316
LN# 215961

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on February 26, 1999
The mortgagor is Marc H. Ferris and Tracie K. Ferris, Husband and Wife

("Borrower"). This Security Instrument is given to
Provincial Bank

which is organized and existing under the laws of the state of Minnesota, and whose
address is 20280 Iberia Ave., Lakeville, MN 55044

("Lender"). Borrower owes Lender the principal sum of
One Hundred Seventy One Thousand Eight Hundred and no/100

Dollars (U.S. \$ 171,800.00).
This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which
provides for monthly payments, with the full debt, if not paid earlier, due and payable on
March 1, 2029

and for interest at the yearly rate of Six and Three / Quarters
percent. This Security Instrument secures to Lender: (a) the repayment of
the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the
payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security

MINNESOTA-Single Family-FRMA/FRLMC UNIFORM INSTRUMENT

Form 3024 9/90
Amended 5/91

Page 1 of 1
MIV 03-01

VAMP MORTGAGE FORMS - 800821-7291



EXHIBIT A

RECEIVED
APR 02 1999

VALIDATE *****
5682 BANY
04/13/1999 13:00:38 641690 NORT
THOMAS V. MOWAT, DAKOTA COUNTY TREAS.
REGISTRATION FEE 393.14
COUNTY CONSERVATION FEE 5.00
RECEIPT NUMBER 376787

DC98080175 DCA AV

Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in **Dakota** County, Minnesota:
 Lot 23, Block 2, Kenridge 2nd Addition

which has the address of 17800 Firebird Court, Lakeville
 Minnesota 55044 (Zip Code) ("Property Address");

(Street, City),

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time

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In Re:

CHAPTER 13 CASE

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CASE NO. 04-32869 DDO

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on July 26, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Marc Harold Ferris
Tracie Kay Ferris
17800 Firebird Ct.
Farmington, MN 55024

Jasmine Z. Keller
12 South 6th Street, Suite 310
Minneapolis, MN 55402

Elizabeth A. Cloutier
Cloutier & Cloutier LLP
608 2nd Avenue South, Suite 250
Minneapolis, MN 55402

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 26th day of July, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**ORDER DENYING CONFIRMATION
OF PLAN**

Marc Harold Ferris
SSN XXX-XX-9797
Tracie Kay Ferris
SSN XXX-XX-3201

Debtor.

CASE NO. 04-32869 DDO

This Chapter 13 Case came on before the Court on August 5, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed May 12, 2004, is denied.

Dated: _____
Judge of Bankruptcy Court